

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

Lindani A. Mzembe,

Plaintiff,

v.

Robert L. Miller, Jr., and David Wemhoff,

Defendants.

Case No. 3:16-CV-894 JVB

OPINION AND ORDER

Lindani A. Mzembe, a pro se prisoner, filed a complaint. “A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quotation marks and citations omitted). Nevertheless, pursuant to 28 U.S.C. § 1915A, the court must review the merits of a prisoner complaint and dismiss it if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief.

Mzembe alleges that Federal District Court Judge Robert L. Miller, Jr., did not protect his due process rights during his federal criminal proceedings. However, a judge is entitled to absolute immunity for judicial acts regarding matters within the court’s jurisdiction, even if the judge’s “exercise of authority is flawed by the commission of grave procedural errors.” *Stump v. Sparkman*, 435 U.S. 349, 359 (1978). Presiding over federal criminal proceedings is within the jurisdiction of a federal judge, therefore Judge Miller has judicial immunity and the claims against him are frivolous.

Mzembe also alleges that his criminal defense attorney, David Wemhoff, did not properly represent him during his federal criminal trial. “In *Bivens* [*v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 394 (1971)] the Supreme Court recognized an implied cause of action for damages against federal officers to redress a constitutional violation.” *Engel v. Buchan*, 710 F.3d 698, 703 (7th Cir. 2013). However, a criminal defense attorney, even one appointed to represent a federal defendant, is not a federal officer. *Christian v. Crawford*, 907 F.2d 808, 810 (8th Cir. 1990); *cf. Polk County v. Dodson*, 454 U.S. 312 (1981) (Criminal defense attorneys, including public defenders, do not act under color of State law for purposes of 42 U.S.C. § 1983.). Therefore, the allegations against him do not state a claim.

For these reasons, this case is **DISMISSED** pursuant to 28 U.S.C. § 1915A.

SO ORDERED on February 16, 2017.

s/ Joseph S. Van Bokkelen
JOSEPH S. VAN BOKKELEN
UNITED STATES DISTRICT JUDGE